

June 10, 2008

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Executive Director

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By Electronic Filing

Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate

Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Comments of the Broadway League**
ET Docket No. 04-186
Introduction of Unlicensed Devices in the "White Spaces"

Dear Chairman Martin, Commissioners Adelstein, Copps, McDowell and Tate:

The Broadway League submits these supplemental comments¹ in response to assertions expressed in recent ex-parte filings, as well as similar arguments publicized in commercial advertising and media reports. These arguments are an attempt to persuade this Commission to ignore or overlook a consistently demonstrated reality: the current state of technological development simply cannot support a sudden and enormous increase in devices operating on the "white spaces" spectrum. Granting immediate national access to these frequencies, occupied throughout the United States, will effectively cripple dozens of long standing industries, including Broadway. Public interest requires that the Commission safeguard incumbent users.

The Broadway League is the national trade association for the Broadway industry. The League began in 1930 when Broadway theatre operators organized to promote their interests and negotiate collective bargaining agreements with theatrical unions and guilds. In subsequent years, the organization's mission expanded to include serving the various needs of theatrical producers in New York and presenters of touring productions throughout North America. Today, the League's 600-plus members include

¹ Please see Broadway League's initial filing, dated October 5, 2007.

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theatre owners and operators, producers, presenters, and general managers in North American cities, as well as suppliers of goods and services to the commercial theatre industry. The League is dedicated to fostering interest in Broadway theatre and supporting the creation of profitable theatrical productions. Each year, League members bring live theatre to more than 30 million people in New York and more than 240 cities across the U.S. and Canada. The League supports its members through an array of programs and events designed to promote live theatre as a vibrant national entertainment medium.

The most current statistics on Broadway's economic significance demonstrate that this industry annually contributes more than \$5.1 billion to the City of New York and generates the equivalent of 44,000 full time jobs. Wireless microphones are an essential tool of the live performance industry, used in the daily operations of countless theatres and non-profit performance venues, as well as by museums, churches, schools, musicians, newscasters and sportscasters. Accordingly, we are seriously concerned over the prospect of portable devices operating on white space frequencies with absolutely no assurance that such devices will not interfere with the equipment our industry has utilized for decades.

With respect to some of the specific assertions we would like to address: Google recently proffered what it deemed "enhanced spectrum protection" as a solution to this complex problem. Google's plan, essentially, recommends the use of (1) beacons, which would be purchased by current white space users to jam local transmissions in the white spaces spectrum, (2) a signal "safe harbor," granting incumbent users exclusive access to channels 36 through 38, and (3) use of spectrum sensing technology.

As has been noted in other recent filings, this proposal is patently flawed and essentially ineffective. Initially, beacon technology remains untested and its application to theatre, sports, music, religious broadcast or any other arena is wholly theoretical. As currently envisioned, beacon technology would operate similarly to spectrum sensing devices, the same devices that have consistently failed FCC laboratory testing. Furthermore, as envisioned by Google, the burden of purchasing and tuning these devices for proper operation would fall upon incumbent users. Finally, and just as significantly, should such a beacon ever come to be realized, FCC regulations may prohibit many incumbent white space users from even operating such a device.

With respect to point (2), channels 36 through 38 are already occupied in many parts of the country or reserved for medical use and, therefore, may not be utilized commercially. Moreover, even if these frequencies were not already occupied, three channels are wholly inadequate to support the broad range of wireless microphone users operating across America. One Broadway theatre alone may occupy up to 40 wireless frequencies for microphones, talkback and equipment operation. The wireless microphone system of each production must be carefully coordinated by technicians prior to each performance in order to avoid signal interference with nearby shows and to adjust for ever-changing ambient frequencies. This highly technical and complicated arrangement, which has gradually evolved over decades, is essential to providing audiences with the quality audio and visual experience they now expect from a Broadway show. Theatre patrons are highly unlikely to forgive lackluster sound quality, frequent interference or highly scaled-back productions, regardless of the cause.

As noted, the Commission has not yet tested a spectrum sensing device that has consistently assured anti-interference protection for wireless microphone systems. Accordingly, any reference to “spectrum sensing” cannot, at least for the existing state of technology, be considered a legitimate solution and must be discounted.

The Broadway League advocates that the FCC ignore demands by organizations attempting to use media and lobbying efforts to conceal fatal flaws in their technologies and recommendations. We further urge the FCC not to be swayed by ongoing efforts to package theoretical and unproven technologies under novel nomenclature, aimed at diverting attention from the highly complicated underlying issues that must be sorted out before any progress may be made. Sacrificing countless numbers of incumbent white spaces users merely to allow a few high profile corporations to circumvent a technological obstacle does not appear to be an efficient method of utilizing the spectrum.

Finally, we reiterate our urging of the FCC to refrain from approving portable white space devices. We request that the Commission continue on its originally intended path of testing this equipment and demanding real, tangible evidence that such devices will effectively protect current wireless microphone users before considering the appropriate approach to using such equipment. Should the FCC’s testing continue

to demonstrate that spectrum sensing devices cannot reliably protect incumbent uses, any application for national use of portable equipment must be rejected until a new technology or proposal is successfully tested and proven reliable under real world conditions.

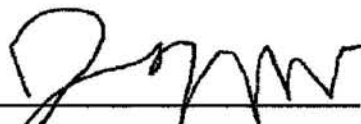
Sincerely,



Charlotte St. Martin,
Executive Director
The Broadway League



Nina Lannan,
Chair
The Broadway League



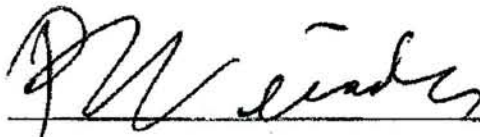
Joseph Z. Nederlander
Nederlander Producing Company of America, Inc.



Rocco Landesman
President, Jujamcyn Theaters



David Stone
Producer, 321 Management



Barry Weissler
President / Producer, National Artists
Management Company (NAMCO)



Gerald Schoenfeld
Chairman
The Shubert Organization

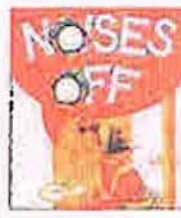
Annette Niemtzow

Annette Niemtzow
Producer, White Dog Productions LLC



Bill Haber

Bill Haber
Ostar Theatricals LLC



Alecia Parker

Alecia Parker
Executive Producer, National Artists Management
Company (NAMCO)



Robyn Goodman

Robyn Goodman
Aged In Wood LLC



Herschel Waxman

Herschel Waxman
Director of Labor, Nederlander Producing
Company of America, Inc.



Susan Frankel

Susan Frankel
Vice President of Finance, Circle in the
Square Theatre

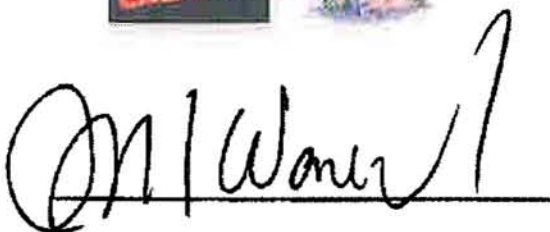




Abbie Strassler
General Manager, Iron Mountain Productions



Peter Entin
Vice President of Theatre Operations,
The Shubert Organization



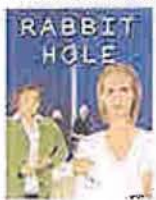
Robert Wankel
Executive Vice President & CFO,
The Shubert Organization



Steven Baruch
President, Scorpio Entertainment, Inc.



Florie Seery
General Manager, Manhattan Theatre Club, Inc.



Doug Baker
General Manager, Center Theatre Group of
Los Angeles



Ahnemann Theatre
Mark Taper Forum
Kirk Douglas Theatre

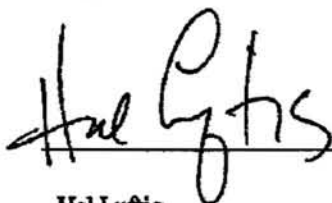
LA's Theatre Company



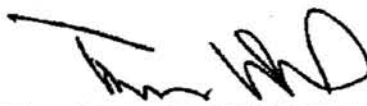
Allan Williams
Associate General Manager,
Alan Wasser Associates



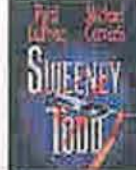
Adam Epstein
President, The Adam Epstein Company, Inc.



Hal Luftig
Producer



Thomas Viertel
Chairman of the Board, Scorpio Entertainment, Inc.



Emanuel Azenberg
President, Iron Mountain Productions



Philip J. Smith
President, The Shubert Organization

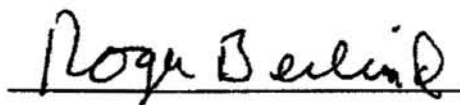




James A. Boese
Vice President, Nederlander Producing
Company of America, Inc.



Richard Willis
Producer / Theatre Operator, Richmark
Entertainment of Los Angeles

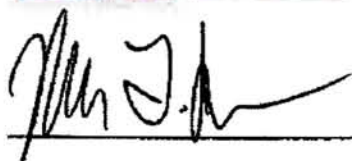


Roger Berlind
Berlind Productions



Susan Myerberg
General Manager & Owner,
Helen Hayes Theatre

LITTLE THEATRE GROUP LLC



Mike Isaacson
Vice President Programming / Producer
Fox Associates LLC



Michael David
President, Dodger Theatricals Ltd.



DODGERS

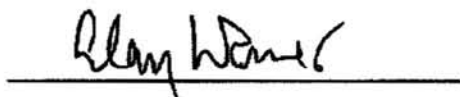




Kevin McCollum
Producer, The Producing Office



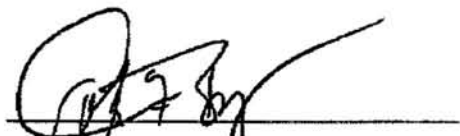
Nina Essman
General Manager, 321 Theatrical
Management



Alan Wasser
Associate General Manager,
Alan Wasser Associates



David Anderson
President & Chief Operating Officer,
Broadway Across America

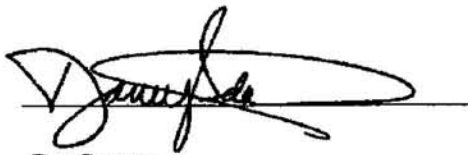


John Breglio
Producer, Vienna Waits Productions, LLC

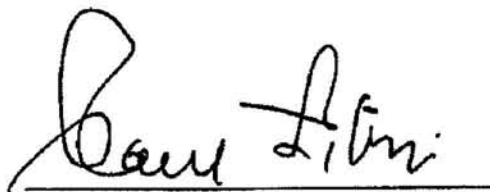


Jeffrey Richards
President, Jeffrey Richards Associates /
Tonka Productions

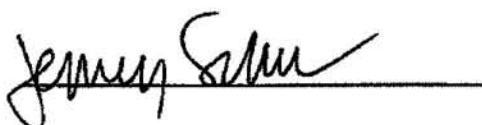




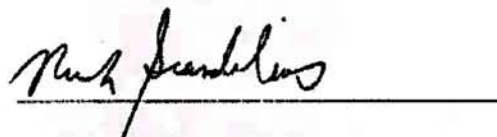
Dan Swartz
Senior Vice President, Broadway Across America



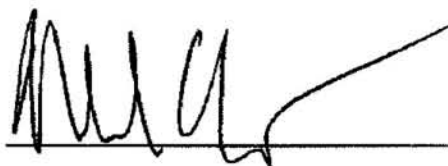
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Vice President & Producing Director
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Producer, The Producing Office



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Executive Vice President, Nederlander
Producing Company of America, Inc.



Marc Platt
Producer, Marc Platt Productions



David Richards
Owner, Richards/Climan, Inc.

